

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEONARD COULOMBE,

Plaintiff,

v.

TOTAL RENAL CARE HOLDINGS,
INC., DAVITA INC.,

Defendants.

NO. CV06-504

PLAINTIFF'S MOTION FOR
VOLUNTARY DISMISSAL OF
REQUEST FOR EMOTIONAL
DISTRESS DAMAGES

**NOTE ON MOTION CALENDAR
AUGUST 18, 2006**

I. RELIEF REQUESTED

Plaintiff Leonard Coulombe requests that the Court enter an order which dismisses without prejudice his request for emotional distress damages referenced in paragraph 4.1 of the Complaint. Plaintiff's claims in the instant action are for monetary relief for defendant's failure to pay compensation from his employment with defendants in the form of stock options, salary and bonus. Plaintiff is not pursuing a claim for emotional distress damages.

II. PERTINENT FACTS

At paragraph 4.1 of his Complaint, under the heading "Damages", plaintiff makes reference to emotional distress damages. In his prayer for relief, plaintiff

PLAINTIFF'S MOTION FOR VOLUNTARY
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(CV06-504) - 1

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1 requests an award of his claimed damages. However, Mr. Coulombe is not seeking
2 an award of emotional distress damages in this action and the Complaint should
3 reflect this fact. Accordingly, he moves for voluntary dismissal of the request for
4 emotional distress damages.

5 **III. APPLICABLE LAW**

6 Rule 41(a) permits voluntary dismissal of a claim for damages without
7 prejudice after a responsive pleading has been filed. Defendants answered the
8 plaintiff's Complaint. No counterclaim or cross-claim has been filed.

9 Since plaintiff is not pursuing a claim for emotional distress, he moves to
10 dismiss the request for emotional distress damages to the extent such a request can
11 be read on the face of the Complaint. He requests that the reference to emotional
12 distress damages be deemed stricken from the Complaint.¹

13 **IV. PROPOSED ORDER**

14 Based upon the above, it is ordered:

15 Plaintiff's request for emotional distress damages is dismissed without prejudice
16 and the reference to emotional distress damages is stricken from the Complaint.

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18 DATED this 28th of July 2006.

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¹ Also, under Rule 12(f), the Court on its own initiative may strike any "immaterial" matter from any pleading.

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2
3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on July 28, 2006, I electronically filed the foregoing to the
5 Clerk of the Court using the CM/ECF system which will send notification of such filing
6 to the following:

- 7
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